IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

FAO.No. 107 of 2006()

AGAINST THE ORDER DATED 18/03/2005 IN IA.3950/04 IN OS.1223/2001 of PRL.SUB COURT,THRISSUR

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APPELLANTS/PETITIONERS/DEFENDANTS 2 TO 4
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1. SUDHEER, S/O. AKATHEPARAMBIL NARAYANAN, THRIPRAYAR DESOM, NATTIKA VILLAGE, CHAVAKKAD TALUK.

2. SAJEEV, S/O. AKATHEPARAMBIL NARAYANAN, THRIPRAYAR DESOM, NATTIKA VILLAGE, CHAVAKKAD TALUK.

3. RAJU, S/O. KIZHAKEPPATTU SANKARANARAYANAN, THRIPRAYAR DESOM, NATTIKA VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: RESPONDENT / PLAINTIFF

SIDHARTHAN, S/O. CHIRIYATH SANKARANARAYANAN, THRIPRAYAR DESOM, NATTIKA AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.T.M.CHANDRAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & P.R.RAMAN, JJ.

F.A.O.No. 107 of 2006

Dated this the 19th day of February, 2007

JUDGMENT

Kurian Joseph,J.

This appeal is filed against the order dated 18-3-2005 in I.A.No.3950/2004 in O.S.No.1223/2001 on the file of the Sub Court, Thrissur wherein the court held that the application filed under Order IX Rule 13 was not maintainable since the suit was already decreed on 17-8-2004 in the presence of the appellants. Inviting reference to the averments in the memorandum of appeal it is submitted that in effect there was no adjudication of the case on merits. Our attention also is invited to the decision of the Supreme Court in B.Janakiramaiah Chetty v. A.K.Parthasarthi, (2003) 5 SCC 641, wherein it has been held that if as a matter of fact there was no adjudication of the case on merits, an application under Order 9 Rule 13 would be maintainable. Learned counsel for the respondent, however, submits that the appellants have all through been recalcitrant in conducting the case. Sufficient indulgence was shown to the appellants on two occasions and yet they were not serious enough to prosecute the case on merits.

2. After having heard counsel on both sides, we are of the view that it is only in the interests of justice that the court below is directed to consider the application on merits in the light of the decision referred to above, however, putting the appellants on terms. Accordingly the order dated 18-3-2005 in I.A.No.3950/2004 in O.S.No.1223/2001 is set aside with a direction to the court below to consider the application afresh in the light of the decision referred to above and dispose of the same within a period of one month from the date of receipt of a copy of this judgment. The appellants shall pay costs to a tune of Rs.3,000/- to the respondent within ten days from today. Proceedings in execution of the decree will be deferred till such time.

The appeal is disposed of as above.

(KURIAN JOSEPH, JUDGE)

(P.R.RAMAN, JUDGE)

ahg.